

**U.S. Department of Justice**



*United States Attorney  
Southern District of New York*

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86 Chambers Street  
New York, New York 10007

May 11, 2016

**By ECF and Hand Delivery**

Honorable William H. Pauley III  
United States District Judge  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: *Ganek v. Leibowitz, et al.*, 15 Civ. 1446 (WHP)

Dear Judge Pauley:

This Office represents the Defendants in the above-referenced matter, a lawsuit filed by Plaintiff David Ganek against 15 current and former federal employees in their individual capacities pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). On May 6, 2016, Defendants filed a notice of appeal of the Court's March 10, 2016, Memorandum & Order, *see* Dkt. No. 63, and Defendants intend to appeal the Court's adverse rulings on all of Plaintiff's claims. The parties now write respectfully to inform the Court as to their respective positions on discovery in this matter. *See* Dkt. No. 62 (granting letter application to file supplemental submission).

In light of the pending appeal, Defendants request that the Court stay discovery pending the outcome of the appeal. *See, e.g., Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (instructing that “[u]ntil this threshold immunity question is resolved, discovery should not be allowed”); *In re Facebook, Inc.*, 42 F. Supp. 3d 558, 558 (S.D.N.Y. 2014) (“As a general rule, when an appeal of the denial of qualified immunity is under consideration, discovery should not proceed.”). Plaintiff concedes that, given Defendants’ decision to appeal, Defendants are legally entitled to a stay of discovery.

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We thank the Court for its consideration of and attention to this matter.

Respectfully submitted,

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